

OUTTEN & GOLDEN LLP

Justin M. Swartz (JS 7989)
Ossai Miazad (OM 1127)
Delyanne Barros (DB 8788)
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

REINALDO CRUZ, BENJAMIN TETTEYFIO,
ANTHONY MANNARINO, CHRISTOPHER
TURKO, DONNA PETERS, DENISE RAMSEY,
RAFIK MISSAK and JEFF ANDERSEN,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

HOOK-SUPERX, L.L.C., CVS CAREMARK
CORPORATION; CVS PHARMACY, INC.;
CVS ALBANY, L.L.C.; NEW JERSEY CVS
PHARMACY, L.L.C.; and MASSACHUSETTS
CVS PHARMACY, L.L.C.,

Defendants.

09 Civ. 7717 (PAC)

**DECLARATION OF JUSTIN M. SWARTZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL
CERTIFICATION AND COURT-AUTHORIZED
NOTICE PURSUANT TO SECTION 216(b) OF THE FLSA**

I, Justin M. Swartz, pursuant to 29 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am a partner at Outten & Golden LLP, attorneys for Plaintiffs herein, and an attorney in good standing admitted to practice in the State of New York and before this Court. I make this declaration in support of Plaintiffs' motion for conditional certification and court-authorized notice pursuant to section 216(b) of the FLSA.

Procedural History

2. Plaintiffs filed their Complaint in this lawsuit on September 4, 2009. Docket No. 1.

3. All of the Defendants filed a single consolidated Answer on October 23, 2009. Docket No. 13.

4. An initial conference is scheduled for November 18, 2009.

5. Discovery has not begun.

6. Ten workers from Arizona, Georgia, Massachusetts, Michigan, New Jersey, New York, North Carolina, and Pennsylvania have joined this case as Opt-in Plaintiffs.

Exhibits

7. Attached are true and correct copies of the following documents:

a. Attached as Exhibit A are true and correct copies of Plaintiffs' Motion to Authorize Notice to Potential Class Members and Incorporated Memorandum of Law and Plaintiffs' Proposed Notice of Right to Join Lawsuit for Unpaid Overtime (Oct. 19, 2009), *Henderson v. Holiday CVS, LLC*, No. 09 Civ. 80909 (S.D. Fla., filed June 19, 2009).

b. Attached as Exhibit B is a true and correct copy of Plaintiffs' Complaint in *Ducasse v. CVS Caremark, Corp.*, No. 09 Civ. 4359 (E.D.N.Y., filed Oct. 9, 2009).

c. Attached as Exhibit C is a true and correct copy of Plaintiffs' Complaint in *Traebecke v. Holiday CVS, LLC*, No. 09 Civ. 22553 (S.D. Fla., filed Aug. 28, 2009).

d. Attached as Exhibit D is a true and correct copy of Plaintiffs' Complaint in *Henderson v. Holiday CVS, LLC*, No. 09 Civ. 80909 (S.D. Fla., filed June 19, 2009).

e. Attached as Exhibit E is a true and correct copy of Plaintiffs' Complaint in *McLean v. CVS Caremark Corp.*, No. 09 Civ. 345 (D. Conn., filed March 3, 2009).

f. Attached as Exhibit F is a true and correct copy of Plaintiffs' Complaint in *Nash v. CVS Caremark Corp.*, No. 09 Civ. 79 (D. R.I., filed Feb. 23, 2009).

g. Attached as Exhibit G is a true and correct copy of Plaintiff's Complaint in *Tata v. CVS Caremark Corp.*, No. 09 Civ. 180 (M.D. Fla., filed Jan. 29, 2009).

h. Attached as Exhibit H is a true and correct copy of Plaintiffs' Complaint in *Gross v. CVS Corp.*, No. 06 Civ. 268 (S.D. Tex., filed Jan. 25, 2006).

i. Attached as Exhibit I are true and correct copies of Plaintiff's Joint Notice of Settlement and Stipulation of Voluntary Dismissal and Incorporated Memorandum of Law (May 1, 2009) and Report and Recommendation (May 5, 2009), *Tata v. CVS Caremark Corp.*, No. 09 Civ. 180 (M.D. Fla., filed Jan. 29, 2009).

j. Attached as Exhibit J is a true and correct copy of Exhibits A, B, C & D, to Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction (July 17, 2009), *Nash v. CVS Caremark Corp.*, No. 09 Civ. 79 (D. R.I., filed Feb. 23, 2009).

k. Attached as Exhibit K is a true and correct copy of Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction (July 17, 2009), *Nash v. CVS Caremark Corp.*, No. 09 Civ. 79 (D. R.I., filed Feb. 23, 2009).

l. Attached as Exhibit L is a true and correct copy of the Docket for *Nash v. CVS Caremark Corp.*, No. 09 Civ. 79 (D. R.I., filed Feb. 23, 2009) as of Nov. 5, 2009.

m. Attached as Exhibit M is a true and correct copy of Plaintiffs' Motion to Compel Discovery Responses (Aug. 26, 2009), in *McLean v. CVS Caremark Corp.*, No. 09 Civ. 345 (D. Conn., filed March 3, 2009).

n. Attached as Exhibit N is a true and correct copy of Defendant's Memorandum of Law in Support of Its Motion to Preclude Certification of Plaintiffs' Proposed Collective Action (Aug. 14, 2009), *McLean v. CVS Caremark Corp.*, No. 09 Civ. 345 (D. Conn., filed March 3, 2009).

o. Attached as Exhibit O is a true and correct copy of Plaintiffs' Motion to File Second Amended Complaint (Aug. 9, 2009), and Plaintiffs' Memorandum of Law In Support of Motion to File Second Amended Complaint (Aug. 9, 2009), *McLean v. CVS Caremark Corp.*, No. 09 Civ. 345 (D. Conn., filed March 3, 2009).

p. Attached as Exhibit P is a true and correct copy of Plaintiffs' Sur-Reply in Response to Defendant's Motion to Preclude Conditional Certification (Oct. 8, 2009), in *McLean v. CVS Caremark Corp.*, No. 09 Civ. 345 (D. Conn., filed Mar. 3, 2009).

q. Attached as Exhibit Q is a true and correct copy of Plaintiffs' Motion to Compel Better Responses to Plaintiffs' First Set of Interrogatories (Oct. 26, 2009), *Henderson v. Holiday CVS, LLC*, No. 06 Civ. 10197 (S.D. Fla., filed June 18, 2007).

r. Attached as Exhibit R is a true and correct copy of the Docket for *Traebecke v. Holiday CVS, LLC*, No. 09 Civ. 22553 (S.D. Fla., filed Aug. 28, 2009) as of Nov. 5, 2009.

s. Attached as Exhibit S is a true and correct copy of the Docket for *Ducasse v. CVS Caremark, Corp.*, No. 09 Civ. 4359 (E.D.N.Y., filed Oct. 9, 2009) as of Nov. 5, 2009.

t. Attached as Exhibit T is a true and correct copy of Defendants' Motion for Protective Order (Oct. 15, 2009), *Henderson v. Holiday CVS, LLC.*, No. 06 Civ. 10197 (S.D. Fla., filed June 18, 2007).

u. Attached as Exhibit U is a true and correct copy of Joint Motion for Protective Order (July 23, 2009), in *McLean v. CVS Caremark Corp.*, No. 09 Civ. 345 (D. Conn., filed March 3, 2009).

v. Attached as Exhibit V is a true and correct copy of the Docket for *McLean v. CVS Caremark Corp.*, No. 09 Civ. 345 (D. Conn., filed March 3, 2009) as of Nov. 5, 2009.

w. Attached as Exhibit W is a true and correct copy of Plaintiffs' Class Action Complaint, filed September 4, 2009.

x. Attached as Exhibit X is a true and correct copy of CVS Caremark Corp. Form 10-K, filed February 27, 2009.

y. Attached as Exhibit Y is a true and correct copy of Defendants' Answer, filed October 23, 2009.

z. Attached as Exhibit Z is a true and correct copy of *Our Culture* from CVSCaremark.com, available at <http://info.cvscaremark.com/our-company/our-culture> (downloaded Nov. 4, 2009).

aa. Attached as Exhibit AA is a true and correct copy of Defendants' Rule 7.1 Statement, filed October 23, 2009.

bb. Attached as Exhibit BB is a true and correct copy of the Declaration of Jeff Andersen, Named Plaintiff.

cc. Attached as Exhibit CC is a true and correct copy of the Declaration of Manuel Carago, CVS assistant store manager.

dd. Attached as Exhibit DD is a true and correct copy of the Declaration of Lisandro Castano, Opt-In Plaintiff.

ee. Attached as Exhibit EE is a true and correct copy of the Declaration of Reinaldo Cruz, Named Plaintiff.

ff. Attached as Exhibit FF is a true and correct copy of the Declaration of Kara DeCerb, former CVS assistant store manager and store manager.

gg. Attached as Exhibit GG is a true and correct copy of the Declaration of Andrew Holmes, Opt-In Plaintiff.

hh. Attached as Exhibit HH is a true and correct copy of the Declaration of Luke Hunter, Opt-In Plaintiff.

ii. Attached as Exhibit II is a true and correct copy of the Declaration of Anthony Jackson, Opt-In Plaintiff.

jj. Attached as Exhibit JJ is a true and correct copy of the Declaration of John Leekin, CVS assistant store manager and store manager.

kk. Attached as Exhibit KK is a true and correct copy of the Declaration of Anthony Mannarino, Named Plaintiff.

ll. Attached as Exhibit LL is a true and correct copy of the Declaration of Rafik Missak, Named Plaintiff.

mm. Attached as Exhibit MM is a true and correct copy of the Declaration of Cyrus Newbegin, Opt-In Plaintiff.

nn. Attached as Exhibit NN is a true and correct copy of the Declaration of Deborah Ogren, Opt-In Plaintiff.

oo. Attached as Exhibit OO is a true and correct copy of the Declaration of Donna Peters, Named Plaintiff.

pp. Attached as Exhibit PP is a true and correct copy of the Declaration of Denise Ramsey, Named Plaintiff.

qq. Attached as Exhibit QQ is a true and correct copy of the Declaration of Benjamin Tetteyfio, Named Plaintiff.

rr. Attached as Exhibit RR is a true and correct copy of the Declaration of Christopher Turko, Named Plaintiff.

ss. Attached as Exhibit SS is a true and correct copy of the Declaration of Debora Williams, former CVS shift supervisor and assistant store manager.

tt. Attached as Exhibit TT is a true and correct copy of Massachusetts CVS Pharmacy, L.L.C. record with the Commonwealth of Mass. Corporate Division, available at <http://corp.sec.state.ma.us/corp/corptest/CorpSearchSummary.asp?ReadFromDB=True&UpdateAllowed=&FEIN=203621694> (downloaded Nov. 2, 2009).

uu. Attached as Exhibit UU is a true and correct copy of Hook-SupeRX, L.L.C. record with the State of Rhode Island Office of the Secretary of State, available at <http://ucc.state.ri.us/CorpSearch/CorpSearchSummary.asp?ReadFromDB=True&UpdateAllowed=&FEIN=000505140> (downloaded Nov. 2, 2009).

vv. Attached as Exhibit VV is a true and correct copy of Plaintiff Reinaldo Cruz's CVS Earnings Statement.

ww. Attached as Exhibit WW is a true and correct copy of Plaintiff Christopher Turko's CVS Earnings Statement.

xx. Attached as Exhibit XX is a true and correct copy of Exhibit 8 ("Improving Outcomes: 2008 Corporate Social Responsibility Report") to Plaintiff's Notice of Filing Preliminary Evidence in Support of her Motion to Authorize Notice to Potential Class Members (Oct. 15, 2009), *Henderson v. Holiday CVS, LLC*, No. 09 Civ. 80909 (S.D. Fla., filed June 19, 2009).

yy. Attached as Exhibit YY is a true and correct copy of *Retail Pharmacy*, available at <http://info.cvscaremark.com/our-company/our-businesses/retail-pharmacy> (downloaded Nov. 5, 2009).

zz. Attached as Exhibit ZZ is a true and correct copy of Declaration of Darryl Bessant, Opt-In Plaintiff.

aaa. Attached as Exhibit AAA is a true and correct copy of Exhibit 3 to Plaintiff's Notice of Filing Deposition Transcripts (Oct. 15, 2009), *Henderson v. Holiday CVS, LLC*, No. 09 Civ. 80909 (S.D. Fla., filed June 19, 2009).

bbb. Attached as Exhibit BBB is a true and correct copy of "Retail Store Management: Position Description" postings from Careerbuilder.com (downloaded Oct. 28, 2009).

ccc. Attached as Exhibit CCC is a true and correct copy of "Store Management Careers" postings from AllRetailJob.com (downloaded Oct. 28, 2009).

ddd. Attached as Exhibit DDD is a true and correct copy of Exhibit 6 ("Basic Operational Skills: CVS Store Management Development Program") to Plaintiff's Notice of Filing Preliminary Evidence (Oct. 15, 2009), *Henderson v. Holiday CVS, LLC*, No. 09 Civ. 80909 (S.D. Fla., filed June 19, 2009).

eee. Attached as Exhibit EEE is a true and correct copy of Exhibit 7 ("Code of Conduct") to Plaintiff's Notice of Filing Preliminary Evidence (Oct. 15, 2009), *Henderson v. Holiday CVS, LLC*, No. 09 Civ. 80909 (S.D. Fla., filed June 19, 2009).

fff. Attached as Exhibit FFF is a true and correct copy of Exhibit 1("Job Description – Assistant Manager") to Plaintiff's Notice of Filing Preliminary Evidence (Oct. 15, 2009), *Henderson v. Holiday CVS, LLC*, No. 09 Civ. 80909 (S.D. Fla., filed June 19, 2009).

ggg. Attached as Exhibit GGG is a true and correct copy of Defendant's Answer to Amended Complaint (Aug. 24, 2009), *McLean v. CVS Caremark Corp.*, No. 09 Civ. 345 (D. Conn., filed March 3, 2009).

hhh. Attached as Exhibit HHH is a true and correct copy of Defendant's Answer (Aug. 14, 2009), *West v. CVS Pharmacy, Inc.*, No. 09 Civ. 2279 (S.D. Tex., filed July 17, 2009).

iii. Attached as Exhibit III is a true and correct copy of Defendants' Answer (Sept. 23, 2009), *Traebecke v. Holiday CVS, LLC*, No. 09 Civ. 22553 (S.D. Fla., filed Aug. 28, 2009).

jjj. Attached as Exhibit JJJ is a true and correct copy of Defendants' Answer (June 23, 2009) in *Henderson v. Holiday CVS, LLC*, No. 09 Civ. 80909 (S.D. Fla., filed June 19, 2009).

kkk. Attached as Exhibit KKK is a true and correct copy of Defendant's Answer (Mar. 31, 2009), *McLean v. CVS Caremark Corp.*, No. 09 Civ. 345 (D. Conn., filed March 3, 2009).

lll. Attached as Exhibit LLL is a true and correct copy of Defendants' Answer (Mar. 11, 2009), *Nash v. CVS Caremark Corp.*, No. 09 Civ. 79 (D. RI, filed Feb. 23, 2009).

mmm. Attached as Exhibit MMM is a true and correct copy of Defendants' Answer (Mar. 2, 2009), *Tata v. CVS Caremark Corp.*, No. 09 Civ. 180 (M.D. Fla., filed Jan. 29, 2009).

nnn. Attached as Exhibit NNN is a true and correct copy of Defendants' Answer to Second Amended Complaint (April 17, 2006), *Gross v. CVS Corp.*, No. 06 Civ. 268 (S.D. Tex., filed Jan. 25, 2006).

ooo. Attached as Exhibit OOO is a true and correct copy of Declaration of Sandra Jones, Opt-In Plaintiff.

I declare under penalty of perjury under the laws of New York and the United States that the foregoing is true and correct.

Dated: November 6, 2009
New York, NY

Respectfully submitted,

OUTTEN & GOLDEN LLP

By:

/s/ Justin M. Swartz

Justin M. Swartz (JS 7989)

Justin M. Swartz (JS 7989)

Ossai Miazad (OM 1127)

Delyanne Barros (DB 8788)

3 Park Avenue, 29th Floor

New York, New York 10016

Telephone: 212-245-1000

*Attorneys for Plaintiff and the Putative
Classes*